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** Pro hac vice admission application forthcoming*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

CATHOLIC LEGAL IMMIGRATION
NETWORK, INC.;

ASYLUM SEEKER ADVOCACY PROJECT,
URBAN JUSTICE CENTER

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES

Defendant.

No.

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

INTRODUCTION

1. Plaintiffs, Asylum Seeker Advocacy Project at the Urban Justice Center (“ASAP”) and Catholic Legal Immigration Network, Inc. (“CLINIC”), bring this action against U.S. Citizenship and Immigration Services (“USCIS”) to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

2. ASAP and CLINIC collaborate to assist families whom the U.S. Department of Homeland Security (“DHS”) detained and separated at the U.S.-Mexican border and then reunited and released pursuant to the injunction in *Ms. L v. ICE*, Case No. 3:18-cv-00428 (S.D. Cal. filed Feb. 26, 2018). Many of these families are eligible for asylum-related determinations pursuant to the settlement agreement in *Dora v. Sessions*, Case No. 1:18-cv-1938 (D.D.C. filed Aug. 17, 2018). ASAP and CLINIC aim to ensure that these formerly separated families are able to secure long-term counsel for their immigration cases.

3. However, many of the parents were released from immigration detention without their immigration documents, and are therefore unaware of the procedural posture of their immigration cases. As part of the efforts to assist formerly separated families, ASAP and CLINIC seek to determine the status of their immigration cases by obtaining copies of their immigration files through FOIA requests.

4. ASAP and CLINIC filed a USCIS FOIA on behalf of one of these reunited parents, Ena Dalila Mendez Mendez (A215-762-120) and requested expedited processing because she did not have a copy of her immigration file.

5. Without access to these records, Ena Dalila Mendez Mendez cannot fully and fairly participate in her immigration process. Furthermore, Plaintiffs lack the information necessary to determine whether Ena Dalila Mendez Mendez qualifies for relief under the *Dora* settlement, preventing them from successfully placing the case with counsel and assisting Ena Dalila Mendez Mendez.

STATEMENT OF FACTS

14. On January 22, 2019, Plaintiffs submitted a FOIA request to USCIS, by email (uscis.foia@uscis.dhs.gov), seeking access to the entire immigration files (also known as “Alien Files”) of the following individuals: Ena Dalila Mendez Mendez (A215-762-120) and her minor child Wilmer Elic Martinez Mendez (A215-762-121).

15. On January 24, 2019, Jill A. Eggleston, Director, FOIA Operations, responded to the FOIA request on behalf of Ena Dalila Mendez Mendez, denying the request in its entirety, stating that the subject of the records had not provided verification of identity in accordance with 6 C.F.R. § 5.21. Plaintiffs filed an administrative appeal of that determination on March 22, 2019 because Ms. Eggleston cited to 6 C.F.R. § 5.21, which is inapplicable because it relates only to requests made under the Privacy Act, and not those made under FOIA. That appeal is pending.

16. On January 24, 2019, Ms. Eggleston also responded to the FOIA request relating to the records of Wilmer Elic Martinez Mendez. Ms. Eggleston denied the request in its entirety pursuant to 5 U.S.C. § 552(b)(6). Plaintiffs filed an administrative appeal of that determination on March 22, 2019 because Ms. Eggleston requested additional verification of identity applicable only to those requests made under the Privacy Act, and not those made under FOIA. That appeal is pending.

17. On February 15, 2019, Plaintiffs filed a second FOIA request for Ena Dalila Mendez Mendez to USCIS by email (uscis.foia@uscis.dhs.gov) with an accompanying signed Form G-639 (Freedom of Information Act/Privacy Act Request), which includes a verification of identity, seeking access to the entire immigration file of Ena Dalila Mendez Mendez (A215-762-120).

18. In the FOIA request to USCIS, Plaintiffs sought expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e) based on the Plaintiffs’ understanding that Ena Dalila Mendez Mendez could potentially qualify for relief under the *Dora* settlement agreement.

1 19. Plaintiffs sought expedited processing based on two regulatory bases: 1) the parent
2 faces the “loss of substantial due process rights,” 6 C.F.R. § 5.5(e)(1)(iii)—in particular, the
3 rights accorded by the *Dora* settlement agreement—and 2) “an imminent threat to the[ir] life or
4 physical safety,” *id.* § 5.5(e)(1)(i)—deportation to the violence in their home country that they
5 have fled.

6 20. With respect to the second FOIA request for Ena Dalila Mendez Mendez,
7 Plaintiffs received an acknowledgement letter dated February 28, 2019 from Defendant USCIS
8 confirming receipt of Plaintiffs’ FOIA request, assigning the control number NRC2019027125. In
9 this February 28, 2019 letter, Defendant USCIS indicated that due to the “increasing number of
10 FOIA requests received by this office, we may encounter some delay in processing your request,”
11 and noted that they would “need to locate, compile, and review responsive records from multiple
12 offices.” Accordingly, Defendant USCIS stated it “will invoke a 10-day extension for your
13 request pursuant to 5 U.S.C. § 552(a)(6)(B).”

14 21. Plaintiffs also received a separate letter dated February 28, 2019 from Defendant
15 USCIS denying the request for expedited processing.

16 22. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant USCIS was required to
17 determine whether to comply with Plaintiffs’ FOIA request within twenty (20) working days after
18 receipt of that request and to notify Plaintiffs immediately of its determination, the reasons
19 therefore, and the right to appeal any adverse determination. Because Plaintiffs submitted the
20 second FOIA request on February 15, 2019, and Defendant USCIS invoked a 10-day extension,
21 Defendant’s determination of Plaintiffs’ FOIA request was due at the latest by April 1, 2019.

22 23. As of the date of this Complaint, USCIS has failed to: (i) determine whether to
23 comply with Plaintiffs’ FOIA request; (ii) notify Plaintiffs of any such determination or the
24 reasons for such determination for the FOIA request; (iii) advise Plaintiffs of the right to appeal
25 any adverse determination of the FOIA request; or (iv) produce the requested records or
26 otherwise demonstrate that the requested records are exempt from production.
27
28

24. Because Defendant USCIS has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A) with respect to the FOIA request, Plaintiffs are deemed to have exhausted any and all administrative remedies with respect to that request, pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1

(Violation of FOIA, 5 U.S.C. § 552)

25. Plaintiffs re-allege paragraphs 1 through 24 as if fully stated herein.

26. Plaintiffs have a legal right under FOIA to obtain the specific agency records sought, and Defendants' failure to make the requested records promptly available to Plaintiffs has no legal basis.

27. Defendants' failure to respond to Plaintiffs' request and to promptly make the records available violates 5 U.S.C. § 552 and applicable regulations promulgated thereunder.

28. On information and belief, Defendants currently have possession, custody or control of the requested records.

29. Defendant's unlawful withholding of the requested public records irreparably harms Plaintiffs and Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to conform their conduct to the requirements of the law. Without access to the records of Ena Dalila Mendez Mendez, Plaintiffs cannot assess the procedural posture of her case, which makes it challenging to secure counsel on her behalf and renders it impossible to determine whether she may benefit from the *Dora* settlement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare that Defendant's failure to respond to Plaintiffs' request for records is unlawful;
- B. Order Defendant to conduct a search for any and all records responsive to Plaintiffs' FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiffs' FOIA request;

- 1 C. Provide for expeditious proceedings in this action;
- 2 D. Order Defendant to produce, by a date certain, any and all non-exempt records responsive
- 3 to Plaintiffs' FOIA request and a Vaughn index of any responsive records withheld under
- 4 claim of exemption;
- 5 E. Enjoin Defendant from continuing to withhold any and all non-exempt records responsive
- 6 to Plaintiffs' FOIA request;
- 7 F. Grant Plaintiffs an award of attorneys' fees and other litigation costs reasonably incurred
- 8 in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- 9 G. Grant Plaintiffs such other relief as the Court may deem just and proper.

10 Dated: April 10, 2019

Respectfully submitted,

11 _____/s/_____
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